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**Via facsimile**  
**703-872-9306**

**Petition Under 37 CFR 1.181(a) Requesting Withdrawal of the Holding of Abandonment**

Re: Application No.: <u>09/993,086</u>	Filed: 11/06/2001
Docket Number: AB-135U	First Named Inventor: Whitehurst, Todd K
Art Unit: 3762	Examiner: Jastrazab, Jeffrey R.
Title: Systems and Methods for Treatment of Obesity and Eating Disorders by Electrical Brain Stimulation and/or Drug Infusion	

Dear Sir/Madam:

The applicant received a Notice of Abandonment dated 4/18/2005 for "failure to timely pay the required issue fee and publication fee...within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85)," a copy of which is attached.

**APPLICANT HEREBY PETITIONS FOR WITHDRAWAL OF HOLDING OF ABANDONMENT**

A grantable petition requires (1) evidence that the issue fee was timely paid (e.g., via a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the fee was timely paid), (2) an additional copy of the previously transmitted correspondence and certificate, and (3) a statement attesting to the previous timely transmission, including a copy of the sending facsimile machine's report confirming transmission to support this statement.

Applicant has attached hereto the "Auto-Reply Facsimile Transmission" received March 4, 2005 from the Patent and Trademark Office (PTO) and "Transmission Verification Report" received March 4, 2005 from applicant's facsimile machine confirming applicant's timely transmission of the Fee Transmittal for the subject application. Applicant has also attached a copy of the "Fee Transmittal" form PTOL-85 transmitted to the PTO on March 4, 2005. In addition, applicant's representative, Bryant R. Gold, hereby attests to personally and timely transmitting the Fee Transmittal on March 4, 2005. Therefore, applicant requests withdrawal of the holding of abandonment in this case.

Sincerely,

Bryant R. Gold  
Vice President/Chief Patent Counsel

BRG/kmm  
Encl.

- Copy of Notice of Abandonment
- Auto-Reply Facsimile Transmission received March 4, 2005
- Transmission Verification Report received March 4, 2005
- Fee Transmission originally faxed on March 4, 2005

Mann Biomedical Park 25120 Rye Canyon Loop, Valencia, CA 91355

(V) 800.638.2575 • (F) 661.562.1700 • (T) 800.638.2575 • [AdvancedBionics.com](http://AdvancedBionics.com)



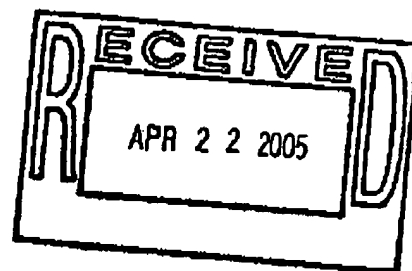
## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
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Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,086	11/06/2001	Todd K. Whitehurst	AB-135U	7480
23843	7590	04/18/2005	EXAMINER	
ADVANCED BIONICS CORPORATION 25129 RYE CANYON ROAD VALENCIA, CA 91355			JASTRZAB, JEFFREY R	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.




**UNITED STATES DEPARTMENT OF COMMERCE**  
**United States Patent and Trademark Office**

 Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09993086

EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

**NOTICE OF ABANDONMENT**

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
- ☐ A reply (with Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_ which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.  
 (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- ☐ A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- ☐ No reply has been received.

- ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

- ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85) (or Notice of Publication Fee Due).
- ☐ The submitted fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.  
 The issue fee by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required, by 37 CFR 1.18(d) is \$ \_\_\_\_\_.

- ☒ The issue fee and publication fee, if applicable, have not been received.

- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

- ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.

- ☐ No corrected drawings have been received.

- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

- ☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

- ☐ The reason(s) below: \_\_\_\_\_

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## Attachment to Notice of Abandonment

**For questions concerning the notice contact**

**Office of Patent Publication**

**Image Assistance Center: 888-786-0101.**

Information is also available on the USPTO Internet web site:

<http://www.uspto.gov/web/patents/pubs/abandonnotice.html>

### **Respond to the Notice of Abandonment by one of the following:**

- 1. Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I and 37 CFR § 1.181) No fee required**

Where an applicant contends that the application is not in fact abandoned (e.g., a reply was in fact filed), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181 to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to 37 CFR § 1.8(b) Certificate of Mailing 37 CFR § 1.10 "Express Mail" mailing or MPEP 503 Postcard Receipt as Prima Facie Evidence. The petition should be addressed as follows:

By mail: Mail Stop: Issue Fee, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

- 2. Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (MPEP 711.03(c) II and 37 CFR § 1.181). No fee required**

Where an applicant contends that the original Notice of Allowance and Fee(s) Due was never received, if adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

- 3. Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)**

Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) or (b) (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. The text of these rules is available on the USPTO Internet Web site. Forms for these petitions, "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a)," PTO/SB/61, and "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," PTO/SB/64, are available in the forms section of the USPTO website: <http://www.uspto.gov>.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Mail Stop Petition, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

**Note:** Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment